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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,512	08/21/2006	David-Gregory Nocelli	P/231-160	8933
2352	7590	11/16/2007	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				SOLD, JENA A
ART UNIT		PAPER NUMBER		
		3765		
MAIL DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/567,512	NOCELLI, DAVID-GREGORY
	Examiner	Art Unit
	Jena A. Sold	3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 07 February 2006.  
 2a) This action is FINAL. 2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-5 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-5 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 07 February 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>2/7/06</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Specification***

1. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

2. The disclosure is objected to because it is not provided the aforementioned headings. Particularly, the following headings should be inserted: "Background of the

Invention", "Brief Summary of the Invention", "Brief Description of the Figures", "Detailed Description of the Invention".

3. The disclosure is objected to because of the following informalities:

Page 4, line 15: Add "from" between "hem" and "catching".

Appropriate correction is required.

Appropriate correction is required.

### ***Claim Objections***

4. Claim 1 is objected to because many of the limitations associated with the user lack antecedent basis. Specifically, "the bottom of the leg" lacks antecedent basis as a leg having a bottom has not been introduced or claimed. Similarly, "the top of the user's foot" lacks antecedent basis, as does "the trouser hem". Claim 1 is further objected to because the use if "or" in the limitation "comprising adjusting means designed to adapt its length or being inserted between the start of the collar and the securing means" is unclear. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

regards as the invention. Specifically, claim 3 is indefinite due to applicant's use of the trademark Velcro®. Trademarks and trade names are used to identify a source of goods, not the goods themselves. Thus, the incorporation of a trademark, such as Velcro®, into a claim, renders the claim scope uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. The trademark Velcro® should be replaced with equivalent descriptive language, such as hook and loop fasteners.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Oglesby (US 5,542,156). Oglesby discloses a trouser leg retaining device comprising restraining strap 10, applicant's collar, inherently including an intermediate portion and end portions 15, 15', applicant's rear part. The intermediate portion – that is, the portion extending between the rear portions – includes elastic portion 11, applicant's adjusting means, and link chain members 12, 12'. Oglesby further discloses means 16, 16', such as snap fasteners, applicant's securing means, disposed at the end portions or rear part 15, 15' for attaching to a wearer's trousers. As visible in Figure 3, collar 11 surrounds

the bottom of the leg and attaches to the wearer above the user's foot, thus resting on top of the user's foot.

7. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Smart (US 4,825,475). Smart discloses a pant leg restraining band 16, applicant's trouser hem height maintenance device having hook and loop fastener 18 securing said device to a wearer's pant (column 2, lines 8-11). As said hook and loop fastener 18 is capable of being position in the rear, said hook and loop fastener 18 anticipates applicant's securing means, arranged to hold and fix the trouser hem. Further, said band 16 inherently has an intermediate part and comprises elastic material, applicant's adjusting means designed to adapt the length of said band (column 2, lines 15 and 57-59).

8. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Christy (US 1,361,565). Christy discloses a mitten fastener comprising tape 6, applicant's collar, including slip buckle 11 disposed along its intermediate portion and capable of making the size variable, thus anticipating applicant's adjusting means (page 1, lines 85-88 and 109-112). Christy further discloses connector 1 including a safety pin 2, applicant's securing means, attached thereto (page 1, lines 65-80). As the safety pin 2 includes a pin portion and a thin, flat receiving portion, said safety pin 2 anticipates applicant's pin cooperating with a disc. Additionally, while the aforementioned device is depicted surrounding a wearer's wrist, tape 6 is equally capable of surrounding the

bottom of a wearer's leg and resting on the top of a wearer's foot while said safety pin 2 holds and fixes a trouser hem.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smart (US 4,825,475) in view of Hayman (US 2004/0128741). Smart discloses the invention substantially as claimed and as previously discussed including a pant leg restraining band having fastener 18, applicant's securing means, disposed to hold and fix a trouser hem. As Smart discloses securing means 18 is a hook and loop type fastener, Smart fails to disclose said securing means 18 comprises a magnet cooperating with a metal counterpart. Hayman teaches a body wearable carrier capable of being worn on a wearer's leg (Abstract), where said carrier may be fastened to said wearer via fastening means 13, 14. Hayman discloses said fastening means 13,14 may be hook and loop type fastener or magnetic means (page 3, para 61), thus disclosing said fastening means as interchangeable. Further, It is well known in the apparel arts that various types of fastening mechanisms are functionally equivalent, including hook and loop and magnetic fasteners, and may be used interchangeably depending upon the desired aesthetic and functional effects. Further, the specification does not give an indication of

why a magnetic fastener would be desirable over another fastener type, specifically a hook and loop fastener. Thus, it would be obvious to one with ordinary skill in the art to replace the hook and loop fastening mechanism of Smart with the magnetic fastener, as taught by Hayman, because said fasteners are equivalent and interchangeable securing means in the apparel arts and a magnetic fastener is more durable and resistant.

***Conclusion***

10. Additional prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith. The following patents are particularly relevant: US 271,891 to McDermott and US 2,670,474 to Schultz.
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jena A. Sold whose telephone number is (571) 272-8610. The examiner can normally be reached on Mon. - Fri. 9:00 A.M. to 5:00 P.M..
12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAS

/Alissa L. Hoey/  
Primary Examiner, Art Unit 3765